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Opinion following rehearing

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GRAND AVENUE ENTERPRISES, INC., etc., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, etc., et al., Defendants and Respondents.	B183343 (Los Angeles County Super. Ct. No. BS 085918)

Appeal from a judgment of the Superior Court of Los Angeles County, David P. Yaffe and David L. Mining, Judges. Affirmed.

Roger Jon Diamond for Plaintiffs and Appellants

Rockard J. Delgadillo, City Attorney, Jeri L. Burge, Assistant City Attorney, Michael L. Klekner and Steven N. Blau, Deputy City Attorneys for Defendants and Respondents.

INTRODUCTION

Los Angeles Municipal Code (LAMC) section 12.70 forbids the location of an adult entertainment business within 500 feet of a school. Grand Avenue Enterprises, Inc. (GAE)[1] sought to open lap dancing cabaret in central Los Angeles. After issuing building permits to GAE, the Los Angeles Department of Building and Safety learned that the Los Angeles Unified School District had already obtained approval from the Division of State Architect to construct a middle school that would be located 150 feet from GAE's adult entertainment concern. The Department of Building and Safety revoked GAE's permits prompting GAE to file a petition for writ of mandamus seeking to overturn the Department's action. The trial court denied the writ petition and granted the motion for judgment on the pleadings brought by defendant City of Los Angeles (the City) on GAE's claim for damages. GAE appeals.

We hold that the Department of Building and Safety did not abuse its discretion in revoking GAE's permits; the trial court properly declined to estop the City from revoking the permits; GAE failed to demonstrate that the City's application of LAMC section 12.70C in this case was unconstitutionally overbroad or vague; and the trial court properly granted judgment on the pleadings. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

a. *Construction of the new middle school is approved*

On January 17, 2001, the Los Angeles Unified School District (LAUSD) authorized a feasibility study for a new middle school for 1,512 students, referred to as Central Los Angeles Area New Middle School #4, to be located on Grand Avenue between 35th and 37th Streets in downtown Los Angeles. Beginning in February 2001, LAUSD held three public meetings to discuss the new school and

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[1] Petitioners are GAE, Luh Bochner, LLC, Derek Luh, David Chew, Won Kim, and Bing Luh.

notified property owners of its decision to conduct a feasibility study of the school site and determine whether the property should be taken by eminent domain. Notice was published in three newspapers that the environmental impact report for the project was available for public inspection. On December 13, 2001, LAUSD applied to the Division of the State Architect for approval to construct Central Los Angeles Area New Middle School #4. The State Architect gave its approval on June 13, 2002, for constructing the foundation system, anchoring the overhead nonstructural elements, and conducting site work for the new school. The State Architect's letter stated, among other things, "Approval . . . is conditioned on construction starting within one year from the date of this letter." Soon thereafter, in June 2002, LAUSD placed a six by ten foot sign on the property, about two hundred feet from 3700 South Grand Avenue, announcing the planned opening of the new middle school at the site in the fall of 2005.

b. *The cabaret obtains permits from the Department of Building and Safety*

Meanwhile, around October 19, 2001, after LAUSD's public notices and meetings, GAE, a limited partnership, was formed to open and operate an adult cabaret near downtown Los Angeles. Sometime thereafter, it closed escrow on the property located at 3700 South Grand Avenue -- less than 150 feet from the proposed school site -- and submitted to the City's Department of Building and Safety its plans to alter the existing warehouse at that location and to construct a lap dancing concern (an adult cabaret or a "sexual encounter establishment"). The Department of Building and Safety approved the plans and issued a building permit (permit 1) on September 6, 2002, a week short of three months after LAUSD obtained its construction approval from the State Architect.

On October 23, 2002, the Department of Building and Safety issued a notice of intent to revoke permit 1 on the ground it had discovered that the cabaret was located within 500 feet of a residential zone in violation of LAMC section 12.70C. The notice stated that the permit was issued in error and would be rescinded within 10 days unless GAE submitted evidence showing why the permit

should not be revoked. GAE did not respond and on November 15, 2002, that permit was revoked under the authority of LAMC section 98.0601 allowing for revocation of permits issued in error. GAE filed no appeal from that revocation.

Instead, GAE submitted revised plans and applied for a new building permit in January 2003, about six months after LAUSD received State approval for construction of its school. At the time GAE was pursuing its building permits, its architect was aware that LAUSD's schools obtained their permits from the State Architect, not the Department of Building and Safety. GAE's architect also knew to inquire with the State Architect whether it had approved school construction. Nonetheless, despite the presence since June 2002, of a large sign on the school site, GAE made no inquiry of the State Architect's office whether it had given approval for a school within 500 feet of the adult cabaret's site.

On February 19, 2003, the Department of Building and Safety issued GAE permit 2 based on GAE's revised plans. Permit 3 (Permit No. 03016-20001-00537), which clarified the work description in permit 2, was issued in July 2003.

c. *LAUSD commences construction*

On June 3, 2003, after holding a community meeting, sending notices to the community, and issuing a notice to proceed, LAUSD began asbestos abatement and demolition of existing buildings in connection with construction of the Central Los Angeles Area New Middle School #4.

d. *The City becomes aware of the conflicting permits*

Three weeks later, around June 20, 2003, the Department of Building and Safety learned that the cabaret might be located within 500 feet of a school site. By then, renovation of the warehouse into a cabaret was nearly complete.

On July 23, 2003, the Los Angeles City Council decided to look into, among other things, "why the permit was issued to the strip club, what options are available for the City including possible revocation of permits and possible reimbursement of fees which might have already been paid."

At a special meeting on August 5, 2003, the City Council's Planning and Land Use Management Committee considered the issue. The Department of Building and Safety staff reported that the cabaret was directly across the street from the school and was 92 to 95 percent complete. At the close of the hearing, the City Council's committee recommended that the Department of Building and Safety be instructed to initiate proceedings to revoke GAE's building permit. The City Council unanimously adopted the committee's report on August 13, 2003.

e. *The Department of Building and Safety commences action to revoke permits 2 and 3*

On August 20, 2003, the Department of Building and Safety issued a notice to GAE of its intent to revoke permits 2 and 3. The notice informed GAE of the City Council's committee's recommendation based on the adult cabaret's proximity to the "school *being constructed by*" LAUSD (italics added) and that GAE had 10 days to present evidence why the permits should not be revoked.

GAE filed its appeal with the Board of Building and Safety Commissioners (the Board). Although GAE did not request one, the Department of Building and Safety faxed a copy of its staff report to GAE's counsel in advance of the hearing. Not included in this fax were the exhibits, including the State Architect's letter approving the school. The Board's staff report indicated -- based on a list of dates LAUSD had provided the Department of Building and Safety -- that the school use had been established before the cabaret use. The State Architect had accepted plans for the school before GAE submitted its plans to the Department of Building and Safety for any of the three permits issued. LAUSD obtained plan approval from the State Architect before the Department of Building and Safety issued GAE any of its permits. The staff concluded that the Department of Building and Safety neither erred nor abused its discretion in its notice of intent to revoke permits 2 and 3 because the adult entertainment use would lie within 500 feet of a school in violation of LAMC section 12.70C, with the result that the permits were issued in error. (LAMC, § 98.0601.)

Days before the hearing, on October 3, 2003, GAE opened its cabaret without an occupancy permit. The police shut down the cabaret and arrested members of GAE.

At the October 7, 2003, appeal hearing before the Board, Department of Building and Safety staff member Peter Kim testified that "the timing of the permit is highly sensitive . . . ." According to Kim, "the chronology and timing of permit issuance date is of most significance for the matter that's before you today." A GAE principal testified that GAE had spent $1.5 million for the site and asked the City to buy out the enterprise. He expressed GAE's need to open the cabaret to recoup some of its costs. GAE's attorney offered as a solution that GAE be issued a *temporary* certificate of occupancy and revisit the question if and when the school is built, and GAE (1) would agree not to force the Department of Building and Safety to be bound by the occupancy certificate, and (2) would not assert its grandfathered rights. At the close of the appeal hearing, the Board voted unanimously that it did not err or abuse its discretion in its notice of intent to revoke building permits 2 and 3. GAE was given written notice of this ruling.

f. *GAE files its writ petition*

In September 2003, while its appeal was working through the Board, GAE filed a complaint in the trial court seeking a writ of mandate, injunctive relief, and damages. Therein, GAE sought to enjoin the City from closing the adult cabaret and refusing to issue appropriate certificates of occupancy and other permits. GAE also sought a writ of mandate to compel the City to issue appropriate permits and a certificate of occupancy.

After the Board issued its ruling, the trial court held a hearing on GAE's petition for writ of mandate. GAE argued, because it was not given a copy of the State Architect's letter requiring that construction commence within one year of the State Architect's approval, that it had been prevented from arguing to the Board that LAUSD did not have a valid permit because construction had not commenced within a year. The trial court ordered an interlocutory remand to the

Board to "clarify whether . . . it stands by its decision to revoke the permits issued to plaintiffs after considering the contents of the State Architect's letter approving the construction of the school."

g. *The Board holds a second hearing*

Returning from the trial court, GAE argued that construction had not begun and so the approval was no longer valid. Staffer Kim testified he had spoken to the regional manager for the Division of State Architect who confirmed that (1) the school project was approved on June 13, 2002; (2) the original approval remained current; (3) the State Architect regularly grants extensions of permits up to four years for projects such as this; and (4) construction had started. A representative from the school itself testified that LAUSD did not have to seek an extension of the original permit because the school district started demolition and toxics abatement work on June 3, 2003, within one-year of the letter, and because the State Architect approved some plan revisions on October 31, 2003. Construction began in February 2004. One Commissioner stated: "When you do construction, clearing the ground is the start of construction. You have to clear it in order to construct. That's part of constructing a building." Another Commissioner stated: "the commission can *find* and believe that the demo[lition and] toxics work that was done on the site, that that's all part of the construction process. [¶] And that . . . because that process did start prior to the expiration of one year -- that, in essence, construction began prior to one year." (Italics added.) The commissioner observed that the State Architect's letter "clearly says that it applies to site work, and site work definitely includes demo[lition] and the toxics work that take place at the site prior to construction. So I think, if anything, that makes it clear that the site work is part of construction." The Board voted

unanimously to uphold its decision to deny GAE's appeal, stating "the letter . . . from the Division of State Architect . . . affirms our decision . . . ."[2]

h. *The instant proceedings*

GAE amended its complaint to allege one cause of action challenging the revocation of permits 2 and 3 as unlawful. Therein, GAE sought a writ of administrative mandate (Code Civ. Proc., § 1094.5) to overturn the Department of Building and Safety's decision to revoke building permits 2 and 3, and a writ of traditional mandate (§ 1085) to compel the Department of Building and Safety to issue a certificate of occupancy. Alleging it suffered injury because it relied on the permits but was precluded from operating the cabaret, GAE sought damages, an injunction, and attorney fees pursuant to title 42 of the United States Code section 1983.

The trial court denied GAE's writ petition. In a nine-page statement of decision, the court resolved the legal claims against GAE. The court made its decision an interlocutory order and transferred the matter for reassignment to the trial department to try GAE's damages claim.

After reassignment, the City moved for judgment on the pleadings as to the damages GAE sought in its complaint. The City argued that the complaint alleged only one set of facts and the violation of one primary right, namely, the City's revocation of the building permits. As all of the legal issues GAE raised in its complaint had been resolved in favor of the City and against GAE in the mandate proceeding, the City argued that GAE was not entitled to damages on any of its claims. The court granted the City's motion and denied GAE leave to amend. Judgment was entered and GAE filed its timely appeal. We are told that after GAE filed its appeal, it sold its building.

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[2] GAE filed petitions for writ of mandate and supersedeas in this Court to challenge the trial court's denial of its preliminary injunction application. We summarily denied those petitions on December 10, 2003.

This court issued its opinion on January 29, 2007, reversing the trial court's judgment. We held that LAUSD's Central Los Angeles Area New Middle School #4 was not a "school" as contemplated by the LAMC at the time GAE applied for its permits 2 and 3 because LAMC section 12.70B(11) defines school in the present tense as an institution that "offers" instruction, not one that will offer instruction in the future. Because Central Los Angeles Area New Middle School #4 was not open and operating, it was not "offer[ing]" instruction. Thereafter, the City filed a petition for rehearing. We granted rehearing on our own motion.

CONTENTIONS

Despite this convoluted factual scenario, GAE posits four general contentions: (1) the Department of Building and Safety unlawfully revoked permits 2 and 3; (2) the City is estopped from revoking the permits; (3) the Department of Building and Safety's interpretation of LAMC section 12.70C is unconstitutional; and (4) GAE is entitled to damages.

DISCUSSION

1. *The Department of Building and Safety did not abuse its discretion in revoking GAE's permits 2 and 3*

a. *Standard of review*

The parties do not agree on the standard of review of the Board's decision to revoke GAE's permits 2 and 3. "The proper method of obtaining judicial review of most public agency decisions is by instituting a proceeding for a writ of mandate. [Citation.] Statutes provide for two types of review by mandate: ordinary mandate and administrative mandate. (Code Civ. Proc., §§ 1085, 1094.5.)" (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848.) "Administrative mandamus under section 1094.5 is appropriate to inquire 'into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal. . . .' [Citation.]" (*Conlan v. Bonta´* (2002) 102 Cal.App.4th 745,

751-752, quoting from Code Civ. Proc., § 1094.5, subd. (a).) The trial court here properly reviewed this issue according to the rules of administrative mandamus.

On appeal from the grant or denial of a petition for administrative mandate, the appellate court reviews the record to determine whether substantial evidence supports the trial court's findings. (*Intercommunity Medical Center v. Belshé* (1995) 32 Cal.App.4th 1708, 1711.) Insofar as facts are not in dispute, " 'the appellate court need only determine whether the Department's ruling was so arbitrary and capricious as to amount to an abuse of discretion.' [Citations.]" (*Simi Valley Adventist Hospital v. Bonta´* (2000) 81 Cal.App.4th 346, 352; *Intercommunity Medical Center v. Belshé*, *supra*, at p. 1711.) However, we are not bound by the trial court's findings to the extent they constitute conclusions of law. (*Family Planning Associates Medical Group, Inc. v. Belshé* (1998) 62 Cal.App.4th 999, 1004.) The issue presented here is one of law because it involves solely a question of statutory construction. (*Matera v. McLeod* (2006) 145 Cal.App.4th 44, 66.)

b. *The Department of Building and Safety's interpretation of LAMC section 12.70C was reasonable and not arbitrary*

GAE's central, albeit extremely loquacious, contention is that the Department of Building and Safety wrongfully revoked its permits 2 and 3.

Municipalities have limited authority to revoke a permit once granted. A permit may not be revoked arbitrarily and without cause. However, " '[A]ny alleged agreement to permit development without application of land use regulations would be invalid and unenforceable as contrary to public policy.' [Citation.]" (*Burchett v. City of Newport Beach* (1995) 33 Cal.App.4th 1472, 1480, quoting from *Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 55.)

LAMC section 98.0601(a)(2) authorizes the Department of Building and Safety "to revoke any permit, slight modification or determination whenever such action was granted in error or in violation of other provisions of the Code and

conditions are such that the action should not have been allowed." (See also LAMC, §§ 11.02 [unlawful for City to issue permit in violation of any code provision], 12.26A(2) [permit issued in violation of code is null and void].)

GAE does not challenge the general right of the Department of Building and Safety to revoke a permit that was improperly granted. Indeed, GAE did not challenge the Department's revocation of permit 1. Nor does GAE claim that its cabaret would be located beyond the 500-foot buffer zone, or that it would have received a building permit if a school were open and operating at 37th and Grand Avenues. Rather, GAE argues that the plain language of LAMC section 12.70B(11) applies only to *existing or open schools, not to schools under construction or planned for the future,* with the result that permits 2 and 3 did not violate LAMC section 12.70C and should not have been revoked.

LAMC section 12.70B(11) defines "school" as an "institution of learning for minors . . . which *offers* instruction in those courses of study required by the California Education Code." (Italics added.) In determining whether the approval to construct a school from the State Architect coupled with demolition and toxics abatement on the site constitutes a "school" within the meaning of LAMC section 12.70B(11), we apply the usual rules of statutory construction.[3]

" '[W]e must ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context.' [Citation.]" (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) If the language of a statute is unambiguous, the plain meaning governs and it is unnecessary to resort to extrinsic sources to determine the legislative intent. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919.) If the

[3] We asked the parties for the legislative history and for additional briefing on the question of the meaning of the definition of school in LAMC section 12.70B.

statutory language does not yield a plain meaning, we may consider extrinsic evidence of intent, including the legislative history. (*Mejia v. Reed*, *supra,* at p. 663.) Most important, however, "[i]n determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body. [Citations.]" (*Ontario Community Foundations, Inc. v. State Bd. Of Equalization* (1984) 35 Cal.3d 811, 816.)

Nonetheless, " 'Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers -- one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity. Thus, where a statute is susceptible of two constructions, the one that leads to the more reasonable result will be followed. A literal construction that will lead to absurd results should not be given if it can be avoided.' [Citations.]" (*Samarkand of Santa Barbara, Inc. v. County of Santa Barbara* (1963) 216 Cal.App.2d 341, 362; accord, *Stewart v. Board of Medical Quality Assurance* (1978) 80 Cal.App.3d 172, 179.)

Thus, prime considerations in interpreting the meaning of a word in a statute or ordinance, are: " 'the objective sought to be achieved by a statute as well as the evil to be prevented." (*People ex rel. S. F. Bay etc. Com. v. Town of Emmeryville* (1968) 69 Cal.2d 533, 543.) And, "where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is thereby enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.' [Citation.]" (*Ibid.*)

Applying those principles, we conclude that LAUSD's Central Los Angeles Area Middle School #4 was a "school" as defined by LAMC section 12.70B(11) at the time GAE applied for its permits 2 and 3. We give great weight to the Department of Building and Safety's construction of LAMC. (*Ontario*

Community Foundations, Inc. v. State Bd. Of Equalization, *supra*, 35 Cal.3d at p. 816; see fn. 5, infra.) Moreover, it is so obvious as not to require evidence that construction of a school does not happen quickly. (Cf. *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal.App.3d 1124, 1130 [" '[M]uch work must be done on the drawing board, in governmental and banking offices before the pick and shovel may be wielded and mortar poured' "].) Our interpretation serves the clear objective of LAMC section 12.70, namely, to prevent the concentration and localization of adult entertainment near where impressionable youngsters will congregate because school project has already been approved and construction has commenced.

Our conclusion is bolstered by LAMC section 11.01(b), which provides that the "[w]ords used in the present tense [in the Code] include the past and future tenses and vice versa." (See also *State Bd. Of Equalization v. Wirick* (2001) 93 Cal.App.4th 411, 417 [applying Rev. & Tax. Code, § 11's similar verb-tense definition]; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1011 [applying Code Civ. Proc., § 1235.050's similar verb-tense definition].) In light of LAMC section 11.01(b), the definition of school in LAMC section 12.70B(11) must be read to mean also an institution which *will offer* instruction. Therefore, GAE's argument that Central Los Angeles Area Middle School #4 was not a "school" because it was not open and operating at the time GAE applied for its permits is untenable because its interpretation ignores LAMC section 11.01. (*People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 422 [in interpreting statutes, we consider it "in the context of the statutory framework as a whole, keeping in mind the scope and purpose of the provision and harmonizing it with the statutory scheme. [Citations.]"].)

Indeed, GAE's interpretation of "school" in LAMC section 12.70C -- one that is open and operating -- is so narrow and restrictive as to result in an absurdity. Under GAE's interpretation, the Department of Building and Safety would be obligated to grant a building permit to a cabaret within 500 feet of a

school that is 99.99 percent complete. We are resistant to "blind obedience to the putative 'plain meaning' of a statutory phrase where literal interpretation would defeat the Legislature's central objective. [Citation.]" (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com*. (1984) 153 Cal.App.3d 605, 614, fn. omitted.)

The effect of GAE's interpretation would be to encourage adult entertainment enterprises, even knowing that a school had obtained state approval, to race to file their permit applications and build their cabarets before the school has completed construction, thereby utterly defeating the objective sought to be achieved by LAMC section 12.70C. We reject as speculative and irrelevant GAE's argument that despite the State Architect's approval for construction of the foundation and commencement of toxic abatement work and the taking of property by eminent domain, that LAUSD might never actually open the school. Necessarily, LAMC section 12.70 was invoked once the plans for the school were *completed, submitted, and approved* by the State Architect.

GAE also contends, as it did before the Board, that LAUSD did not have a valid permit where the State Architect's approval was conditioned on construction commencing within one year and LAUSD had not begun to construct its school within that timeframe. GAE asserts, without citation to authority, that "[d]emolition has to be considered to be the opposite of construction." This is really a factual question. The trial court ordered a second hearing before the Board to address this very issue. The Board *found* that demolition and federal- and state- mandated toxics work is part of construction and it all started within one year of the approval letter. The record supports this finding. The Division of State Architect and LAUSD both confirmed to the Board that the State Architect's approval *was current*. LAUSD commenced demolition and toxics abatement by June 3, 2003, just under a year after the State Architect's approval. Also, LAUSD received additional approval for revised plans during that period further extending the approval period. GAE focuses on the testimony of

LAUSD's project manager for the new school that construction began in February 2004 to argue that the evidence does not support the conclusion that the State Architect's approval remained effective. However, substantial evidence supports the Board's finding that construction, for purposes of the State Architect's approval, commenced in June 2003 when LAUSD began the demolition and toxics abatement. Therefore, the evidence supports the conclusions of the Board and the trial court that LAUSD had valid approval.

Because we agree with the conclusion of the Board and the trial court that the LAUSD project was a school within the meaning of LAMC section 12.70C, permits 2 and 3 were granted in error and in violation of LAMC section 12.70C and conditions were such that the permits should not have been granted. (LAMC, § 98.0601(a) & (b).)[4] The Department of Building and Safety did not abuse its discretion in revoking those permits.[5]

c. *The trial court properly declined to estop the Department of Building and Safety*

Alternatively, GAE contends, even if the permits were improperly granted, that once they were issued and plaintiffs relied on them by expending $1.5 million to renovate the warehouse, it acquired a "vested right" to operate its adult cabaret and so the Department of Building and Safety was estopped to revoke the permits. The trial court rejected GAE's argument and declined to apply the doctrine of estoppel against the government.

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[4] Among the bases for revoking the permits was LAMC section 91.6205.16. Mr. Kim explained to the Board that the Department considers which permit was issued first. However, as GAE observes, LAMC section 91.6205.16 pertains to signage not permits to construct buildings. Nonetheless, this first-in-time rule is a long-standing practice and policy of the Department. In any event, the inapplicability of LAMC section 91.6205.16 does not alter the result here because, as explained, the permits 2 and 3 were improper and unlawfully granted.

It has long been the law in California that "[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497.)

However, it is also " 'well-established . . . that an estoppel will not be applied against the government if to do so would effectively nullify "a strong rule of policy, adopted for the benefit of the public, ..." [Citation.]' . . . ' "The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it. [Citations.]' " (*Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 819.) "[T]he vast majority of cases . . . hold that a governmental entity is not estopped from enforcing the law. [Citations.]" (*Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 776, citing *Pettitt v. County of Fresno, supra*, at p. 820.)

"The existence of an estoppel is generally a question of fact for the trial court whose determination is conclusive on appeal unless the opposite conclusion is the only one that can be reasonably drawn from the evidence. [Citation.]" (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305; accord *Pettitt v. City of Fresno, supra,* 34 Cal.App.3d at p. 818.) However, "[w]hether the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify the effect of the estoppel on the public interest must be decided by considering the matter from the point of view of a court of equity. [Citation.]" (*Smith v. County of Santa Barbara, supra*, 7 Cal.App.4th at p. 776.)

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5 Given our conclusion that the Department of Building and Safety properly revoked GAE's permits 2 and 3, the City did not wrongly deny GAE an occupancy certificate.

Applying the standard to the facts of this case, we hold that the trial court did not err in declining to estop the Department of Building and Safety from revoking GAE's permits 2 and 3. We have already held that permits 2 and 3 were issued in error and in violation of an established ordinance. The City "cannot be estopped to deny the validity of a permit or other representations respecting the use of property *issued or made in violation of the express provisions of a zoning ordinance*." (*Pettitt v. City of Fresno, supra,* 34 Cal.App.3d at p. 819, italics added.)

Moreover, we agree with the trial court that GAE could not have reasonably relied on permits 2 and 3, with the result GAE cannot demonstrate an element of estoppel. LAMC section 91.106.4.3.2 reads: "Neither the issuance of a permit nor the approval by the department of any document shall constitute an approval of any violation of any provision of this Code or of any other law or ordinance, and a permit or other document purporting to give authority to violate any law shall not be valid with respect thereto." Given (1) the declaration in LAMC section 91.106.4.3.2; (2) the fact that LAUSD had started the wheels in motion to place the school on Grand Avenue between 35th and 37th Streets -- including issuing public notices and holding public meetings -- before GAE purchased their property; and (3) the fact that LAUSD obtained approval for its school before GAE obtained permits 2 and 3, GAE could not reasonably have relied on the validity of permits 2 and 3.[6] "Even an express permit granted by the Board contrary to the terms of the ordinance would be of no effect [citations].' " (*Pettitt v. City of Fresno, supra,* 34 Cal.App.3d at p. 822, citing *Magruder v. City of*

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[6] GAE argues that the record is undisputed that the City and the school district "were in constant communication regarding the [school] project." Such communication, however, does not alter the fact that permits 2 and 3 were not valid. Nor does it excuse GAE from ascertaining for itself whether a school had already been approved within 500 feet of GAE's property. In any event, the trial court found that the two permitting processes were simultaneous, a factual finding that is supported by the evidence and which we therefore cannot undermine.

Redwood (1928) 203 Cal. 665, 674-675; LAMC, § 91.106.4.3.2.)[7] GAE could not rely on permits 2 and 3 because they were invalid and unenforceable ab initio as violative of the Code and hence contrary to public policy. Therefore, estoppel does not apply in this case.

Because it could not reasonably rely on permits 2 and 3, GAE did not acquire a vested right, its argument to the contrary notwithstanding. " '[T]he rights which may "vest" through reliance on a government permit are no greater than those specifically granted by the permit itself.' [Citation.]" (*Blue Chip Properties v. Permanent Rent Control Bd.* (1985) 170 Cal.App.3d 648, 660.) That is, "[t]he vested rights doctrine was founded upon an estoppel theory. 'Where a building permit to erect a specific type of building is issued by a county or city and the permittee acts upon it and incurs obligations, or in good faith commences construction, his rights become vested and the governmental body is thereafter estopped to set up a zoning ordinance *subsequently* enacted. [Citation.] Where no such permit has been issued, it is difficult to conceive of any basis for such estoppel.' [Citation.]" (*Court House Plaza Co. v. City of Palo Alto* (1981) 117 Cal.App.3d 871, 885, italics added.) Where the permit issued was in violation of existing law, it was void, and estoppel cannot apply and so GAE had no vested right.

d. *This case does not present any constitutional issues*

GAE makes several scattershot contentions under this rubric, none of which is availing. GAE first argues that the City Council denied it due process by failing to notify it of the City Council's hearing and thus denying GAE an opportunity to be heard at that hearing. "Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property

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[7] For this reason, because GAE had no right to open its adult cabaret, there is no merit to its further contention that the City should have allowed the cabaret to open because GAE had offered to waive any argument it had about nonconforming use or grandfathered rights.

interest. [Citations.] [¶] It is equally well settled, however, that only those governmental decisions which are *adjudicative* in nature are subject to procedural due process principles. *Legislative* action is not burdened by such requirements. [Citations.]" (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) The City Council merely *recommended* that the Department of Building and Safety *initiate proceedings to revoke the permits*. Its conduct was not adjudicatory. The adjudicative body in this case was the Department of Building and Safety and the Board. GAE does not, and indeed cannot, contend it was denied notice and an opportunity to be heard in the *two* hearings held by the Board to determine whether the Department of Building and Safety abused its discretion in revoking the permits.

GAE next cites *Young v. City of Simi Valley* (9th Cir. 2000) 216 F.3d 807.[8] There, *after* Young, an adult business, applied for a permit, a third party who knew of Young's plans, sought permission to open an adult bible study school within Young's buffer zone, thus trumping Young's use and preventing Young from receiving its permit. The Ninth Circuit held that an ordinance which allowed a religious organization, a school, or other sensitive use to file a permit application with the City at any time before the adult entertainment use received approval of its project effectively nullified the few areas in the City set aside for adult uses. (*Id*. at pp. 817-818.) Such an "unfettered power" of the sensitive third party constituted an unconstitutional "veto." (*Id*. at p. 818.)

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[8] In support of its constitutional arguments, GAE cites generally, and without pin-point citation or analysis, to both *Young v. City of Simi Valley*, *supra*, 216 F.3d 807, and *Tollis, Inc. v. San Bernardino County* (9th Cir. 1987) 827 F.2d 1329, 1333. GAE fails to explain how these cases aid in its analysis or otherwise help its contentions. Merely alluding to a constitutional argument without application to the facts does not provide this court with sufficient discussion to consider the arguments. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007.)

Young is inapposite.[9] There, the bible study group knew full well of the adult business' prior complete application and yet had the power to file a subsequent application to thwart the adult business. By contrast, here, the LAUSD project, the sensitive use, *predated that of GAE*. LAUSD had already finalized its plans and specifications, taken the property by eminent domain, notified the neighborhood and local property owners of its plans, and held three public hearings into the proposed Central Los Angeles Area New Middle School #4 before GAE even purchased its property. Thus, the school was not such a chimera as GAE would have us believe. Indeed, GAE conceded to the trial court that *this is not a case where the school district is "running in and putting a school there just to prevent*" GAE from opening an adult enterprise. (Italics added.)[10]

Finally, GAE makes general contentions that the City's interpretation of LAMC section 12.70C unconstitutionally violates GAE's rights protected by the First Amendment of the United States Constitution. GAE commences its appellate brief by reciting hornbook law involving the First Amendment. GAE cites numerous cases to make constitutional arguments based on the assumption that because its adult cabaret is adult entertainment, ipso facto the City has violated its constitutional rights. However, GAE has provided us with no analysis or discussion to explain how the legal authority it cites is relevant or applies to the

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[9] Because *Young v. City of Simi Valley, supra,* 216 F.3d 807 is inapt, we deny GAE's request for judicial notice, filed February 3, 2006, as irrelevant. We further reject GAE's contention that the City's application of the ordinance in this case is unconstitutionally overbroad or vague.

[10] Accordingly, we need not address GAE's contention that the City's interpretation of LAMC section 12.70C enables the Department to exclude adult entertainment on the off chance that a school might someday be constructed in the area. As LAUSD had received approval from the State Architect and had commenced demolition and toxics abatement, the facts of this case are different than the scenario GAE depicts in this argument.

facts of this case. Hence, we do not consider this contention. (*Berger v. California Ins. Guarantee Assn., supra*, 128 Cal.App.4th at p. 1007.)

2. *The trial court did not err in granting judgment on the pleadings as to the damages GAE sought in its complaint*

GAE contends that damages should be awarded. We conclude that the trial court correctly granted the City its motion for judgment on the pleadings.

A motion for judgment on the pleadings is similar to a general demurrer and so the standard of review is the same. (*Baughman v. State of California* (1995) 38 Cal.App.4th 182, 187.) Thus, "[w]e treat the pleadings as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. When leave to amend is not given, we determine whether the complaint states a cause of action and whether the defect can reasonably be cured by amendment. If it can be cured, the trial court has committed reversible error. Otherwise, we affirm. The burden of proof is squarely on the plaintiff. [Citation.] The judgment of dismissal will be affirmed if it is proper on any grounds stated in the motion, whether or not the trial court relied on any of those grounds. [Citation.]" (*Ibid*.)

"California courts employ the 'primary rights' theory to determine the scope of causes of action. [Citation.] [T]here is only a single cause of action for the invasion of one primary right. In determining the primary right, 'the significant factor is the harm suffered.' [Citation.]" (*Swartzendruber v. City of San Diego* (1992) 3 Cal.App.4th 896, 904, disapproved on other grounds in *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 72.)

GAE's complaint pleads one set of operative facts violating one primary right, namely, the City's revocation of building permits 2 and 3. GAE sought writs of mandate to overturn the Department of Building and Safety's decision to revoke the permits. We have affirmed the trial court's ruling denying the writ petitions. All that remains is GAE's prayer for damages, which alleges that City's wrongful revocation of the permits violated GAE's civil right to free speech and

due process under the United States Constitution. This is simply a new legal theory, stated in constitutional terms, for recovery of damages for the same injury. Because the writs were properly denied, the claim for damages can not lie.

GAE argued to the trial court that its claim for damages was not based on the *revocation* of the permits; "we're claiming damages because they [the Department of Building and Safety] gave us the permit in the first place. . . . We relied upon that permit, but now we cannot complete the project." It offered to amend its complaint to allege this reliance to its financial detriment. However, as analyzed above, the trial court already properly ruled against GAE concluding that GAE did not reasonably rely on the permits. " '[A]ny alleged agreement to permit development without application of land use regulations would be invalid and unenforceable as contrary to public policy.' [Citation.] *To the extent the [developers] expended any sums, they did so at their peril*." (*Burchett v. City of Newport Beach, supra,* 33 Cal.App.4th at p. 1480, italics added.) As GAE could not reasonably rely on those permits, it expended money at its peril with the result that it is not entitled to damages.

In short, the trial court rejected all of GAE's theories, ruling that the Department of Building and Safety's revocation of GAE's permits was not wrongful or unlawful with the result the City was not liable under any legal theory raised by GAE. We have affirmed the trial court's rulings as to the legal issues. GAE has not demonstrated how amendment could change the result. There being no violation of a cognizable right, GAE is not entitled to damages. Therefore, the trial court properly granted the City's motion for judgment on the pleadings.

DISPOSITION

The judgment is affirmed. Respondent shall recover costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.